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August 25, 1996

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Mr. William F. Caton , Secretary
Federal Communications Commission
Room 222
1919 M Street, N. W.
Washington, D. C. 20554

DOCKET FILE COPY ORIGINAL

Re: Comments of Voice-Tel in Response to the NPRM relating to Accounting Safeguards under the Telecommunications Act of 1996, (CC DOCKET NO. 96-150)

Dear Mr. Caton:

Enclosed for filing with the Commission, on behalf of Voice-Tel are an original and eleven copies of its Comments in the above-captioned docket.

Please date-stamp the extra copy of this letter that has been enclosed for this purpose and return it in the self-addressed envelope that has been provided.

If you have any questions with respect to this matter please do not hesitate to call the undersigned.

Sincerely,

Ruth S. Baker-Battist
Counsel for Voice-Tel

Enclosures

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

In the Matter of

Implementation of the)
Telecommunications Act of 1996)
) CC Docket No. 96-150
Accounting Safeguards Under the)
Telecommunications Act of 1996)

COMMENTS OF VOICE TEL

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August 26, 1996

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SUMMARY

These comments are directed to the issue of telemessaging service and the use of accounting rules to assure against the subsidization prohibited by Section 260 of the 1996 Act. For the reasons set forth in the body of these comments, Voice-Tel respectfully suggests that in the current environment the accounting of operations on an integrated basis is not sufficient to provide the safeguards required. In suggesting that the Commission should not permit any local exchange company to provide telemessaging on an integrated basis, Voice-Tel recognizes that it bears a heavy burden to demonstrate that nothing less will enable the Commission to carry out its responsibilities under Section 260 of the 1996 Act.

Based on its experience, Voice-Tel does not believe that the accounting methodologies can be relied upon to prevent wrongful subsidization where the operations are integrated. As currently offered on an integrated basis, basic telecommunications and voice messaging are so intermeshed and intertwined as to prevent any meaningful allocations. So long as the LEC can provide for the installation of basic service and, at the same time, market a host of optional features including call forwarding, conference calling, call waiting and telemessaging, there is no way to segregate the direct and indirect costs associated with the telemessaging effort. Because telemessaging is viewed as merely one of a number of options offered by the telephone company, accounting rules, no matter how carefully drawn, simply cannot have a meaningful effect at the local level.

In addition to the difficulties caused by complete integration in marketing, the extensive integration of telephone plant makes appropriate allocation of facilities virtually impossible as well. As configured by the LEC, customers that use telemessaging use their own basic lines and trunks. New wiring is rarely required. In other words, to the end user, telemessaging is normally viewed as nothing more than an additional option. It is thus difficult for the local exchange company to differentiate between its activities in selling call forwarding and the like from telemessaging. The integration and

In simple terms, a significant impediment to the ability of Voice-Tel to compete fairly is the almost seamless manner in which local exchange carriers currently offer their voice messaging services to their ratepayers. Indeed, it is doubtful if most customer service representatives understand that voice messaging is anything other than a simple option offered to the LEC customers. Because of this, as will be discussed below, accounting provisions alone are insufficient to provide the safeguards demanded by Section 260 of the 1996 Act. As is the case of the scrambled egg, the yolk of the basic service cannot be separated from the white of the telemessaging once they are mixed together.

To the extent that such rules affect the allocation of costs on a company level, reliance on accounting rules alone may be counterproductive. This is because regulators and companies might tend to rely on the allocation rather than to examine the basic integration and its attendant costs. Meaningful competition requires the establishment of separate affiliates in line with the Commission's tentative conclusion set forth in paragraph 33 of the instant NPRM. In this connection, however, accounting in and of itself cannot provide safeguards against subsidization. At the very least a rigorous auditing program is required to assure that the required accounting is performed properly.

With respect to the authority of the Commission to preempt state regulation of telemessaging, Voice-Tel submits that Section 260 giving the Commission jurisdiction over all telemessaging services by all LECs. In this connection, Voice-Tel suggests that the language of Section 272 (a)(2)(B)(I) which does not permit even incidental telemessaging services without a separate affiliate, implies the inherent interstate aspects of telemessaging. This implication is consistent with the experience of Voice-Tel franchisees that find that their customers use Voice-Tel indiscriminately for interstate and intrastate communication.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

In the Matter of

Implementation of the Telecommunications Act of 1996	))	
	)	CC Docket No. 96-150
Accounting Safeguards Under the Telecommunications Act of 1996	))	

To the Commission:

COMMENTS OF VOICE TEL

Two hundred fifteen individually owned and operated small business communications consultants representing 715 jobs doing business under the common name Voice Tel, through their attorney, hereby files their comments in the above-captioned docket. These comments do not pretend to cover every item upon which comment was invited by the Commission. Rather, the comments contained herein are designed to provide pertinent information that specifically affect the filers of these comments. In addition, these comments are designed to indicate the scope of the accounting rules that might assist in assuring compliance with the provisions of the Telecommunications Act of 1996 (the 1996 Act)[1].

[1] Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, *to be codified at* 47 U.S.C. §§ 151 *et. seq.*

I. INTRODUCTION

A. DESCRIPTION OF VOICE-TEL AND ITS BUSINESS

Voice-Tel provides sophisticated voice messaging services that, among other things allows their customers (1) to respond to messages from other Voice-Tel customers, (2) to receive a message when they choose not to answer the telephone or when the called line is busy, (3) to respond to messages from other Voice-Tel customers without leaving the "mail box," (4) to pass messages on to other Voice-Tel customers, with or without comment, (5) to send a message to multiple Voice-Tel customers with one call, and (6) to be notified immediately when urgent messages await them. Voice-Tel also acts as a consultant in the provision of telecommunications services, and provides paging and long distance telecommunications services to its customers. All of this can be accomplished using the equipment owned and operated by Voice-Tel so that customers need not make any investment in equipment. Calls to mailboxes of other Voice-Tel customers may be made through the Voice-Tel network without entering the public switched network. The Voice-Tel network serves over 3500 cities and communities throughout the United States, Canada and Puerto Rico.

There are several features offered by Voice-Tel that are not generally available to customers of other voice messaging services. At the same time, there is substantial competition with the local exchange carriers (hereinafter "LECs" or "telcos") operating in the areas serviced by Voice-Tel. Some of this competition is similar to that faced from other competitors. However, the competition from the LECs is unique both in the way that LEC voice messaging services are marketed and in the way in which LECs integrate their voice messaging offerings with their other, basic telecommunications services. The resulting competition from the LECs, as detailed in Voice-

Tel's comments in CC Docket No. 96-113, constitutes an almost insurmountable barrier. As discussed below, to a significant extent, the current accounting provisions that permit a LEC to market and provide voice messaging services on an integrated basis, exacerbate rather than ameliorate this problem. It is for this reason that Voice-Tel contends that accounting provisions alone are insufficient to provide the safeguards demanded by Section 260 of the 1996 Act.

B. <u>SCOPE OF THESE COMMENTS</u>

Although in this Notice of Proposed Rulemaking the Commission has invited comments on a wide range of accounting issues, Voice-Tel's comments are limited to the impact of accounting rules and policies on the provision of telemessaging. In this connection, however, Voice-Tel recognizes the indirect impact that general allocation policies and depreciation provisions have on the manner in which LECs account for activities affecting the marketing and provisioning of telemessaging. Where appropriate, therefore, comments are directed to these issues as well.

In light of its experience, Voice-Tel contends that it is impossible to devise reasonable allocation procedures for integrated operations in the telemessaging arena that would meet the requirements of Section 254(k) of the 1996 Act[2]. In these comments Voice-Tel provides the bases for this conclusion. We also make suggestions for accounting safeguards in an environment that would require the establishment of separate affiliates for the marketing and provisioning of voice messaging services by the LECs.

[2] 47 U.S.C. 254(k). That section states, in pertinent part, that "any necessary cost allocation rules, accounting safeguards, and guidelines to ensure that services included in the definition of universal service bear no more than a reasonable share of the joint and common costs of facilities used to provide those services." 47U.S.C. § 254(k)

In addition, these comments address the essential jurisdictional nature of telemessaging services. Voice-Tel's experience strongly suggests that a significant proportion of telemessaging services is interstate in character. The inextricable nature of the service supports the conclusion that it is interstate in nature and thus subject to the jurisdiction of the Federal Communications Commission rather than the states.

Finally, as demonstrated below, Voice-Tel does recognize that accounting safeguards are essential as part of a thorough program designed to prevent overreaching and to ensure fair treatment of both customers and competitors. Accounting safeguards are essential to the creation of a competitive atmosphere but, in and of themselves, they offer no real protection for the basic ratepayer or the potential competitor. What they can do, however, can assist a company that is committed to full competition and fair treatment of its own customers by assuring that it is accounting for its costs properly. Simply put, even though strict accounting rules should be promulgated and enforced, they should not be relied upon for ensuring fair dealing.

II. WHAT CAN BE EXPECTED FROM ACCOUNTING SAFEGUARDS

A. ACCOUNTING FOR INTEGRATED OPERATIONS

In the introductory material, the Notice of Proposed Rulemaking observes the Commission's tentative conclusion that, with certain modifications, the provisions of Parts 32 and 64 of the FCC rules will assist in keeping incumbent local exchange carriers from imposing the costs and risks of their competitive ventures on interstate ratepayers and insure that interstate ratepayers share in the economies of scope incumbent carriers realize when they expand (paragraph 11). In this connection the FCC requests comment on whether less detailed accounting safeguards with suffice to achieve the aims of Sections 260 and 271-276 of the 1996 Act and implies that any more detail would be required only upon a compelling showing that it is required. Voice-Tel respectfully submits, for the reasons set forth below, that the current Part 32 and Part 64 rules cannot ensure that telemessaging services that are marketed and provided on an integrated basis will not be subsidized by subscribers to regulated telecommunications services.

1. THE MARKETING OF TELEMESSAGING BY THE LEC

Unlike many other information services, telemessaging is provided as part of the basic service offered by a LEC. When a customer calls for new service, telemessaging is one of several options that most customer service representatives recommend as a matter of course. A customer requesting new or expanded service can expect to be informed of the availability of telemessaging at the same time that he learns of other basic service options as three-way conferencing, call waiting and call forwarding. It is doubtful that even the customer service representative understands the essential difference between conferencing, call waiting and call forwarding on the one hand and telemessaging on the other. Most certainly the customer is not told that the representative is marketing both basic telephone service with its optional enhancements and a separate, stand-alone competitive information service provided by LEC competitors.

Because the same customer service representative is engaged in the marketing of a whole range of services at the same time, including telemessaging, there are no easily identifiable separate activities that can be isolated and separately costed. Cost allocations in any form depend on an ability to isolate and distinguish between different activities that form the basis of the allocation. Because there are no unique activities characterizing the marketing of voice messaging services, accounting protocol cannot be relied upon to perform appropriate and adequate cost allocations.

The current integrated offering has creates virtually insurmountable difficulties facing any attempt to use accounting allocations to segregate the costs of providing the different services. Because the same customer service representative markets an entire range of optional services, including telemessaging, there are no easily identifiable separate activities on the part of telecommunications employees that can be isolated and separately accounted for. Cost allocations in any form depend on an ability to isolate the different activities that form the basis of allocations. Because there are no unique activities characterizing the marketing of voice messaging services, accounting protocol cannot be relied upon to perform appropriate cost allocations.

In addition to the marketing that occurs when a customer contacts the sales office, the publications and "informational" material disseminated by the LEC in the normal course of its business frequently includes information on its telemessaging services integral to information on the other services that it offers. In response to the Commission's Notice of Inquiry in CC Docket No. 96-113, Voice-Tel included sections of the White Pages from US West in Denver illustrating the integration of the marketing of voice messaging services with the other telephone options provided by US West. In a similar manner, bill inserts often contain solicitation for the LEC voice messaging features along with solicitation of other options. Although accounting rules can be devised to segregate the costs for these types of activities, the synergistic effect cannot be costed. Even more important, the driving force leading to the creation of these marketing tools cannot be determined. Finally, any rules would at best be of minor assistance in curing the severe problems of integrated marketing.

Time motion studies have often been devised to segregate integrated operations. Whether it is useful to embark on such studies depends on the costs of conducting the study and the reliability of the results in the wake of the studies. In this instance, it is respectfully suggested that the studies would not be reliable as we move into the future as the sophistication of the customer and the offering may be expected to change. In addition, one suspects that there is little consistency in the actual time spent by customer service representatives in the marketing of voice messaging. Today's telephone customers range from the sophisticated to the neophyte in understanding the complexities provided by modem telephony. Tomorrow's customers can be expected to span the same broad range of knowledge. In the same manner, different LECS and even different telephone offices within the same LEC may demonstrate widely disparate understandings of the nuances of their competitive services. All this means that whatever credibility time motion studies continue to have in other areas, reliance on them in the telephone environment in connection with telemessaging services would be misplaced.

In the absence of separately definable costs and with no basis for developing reliable allocators, reliance on accounting safeguards to prevent subsidization is not warranted.

2. THE PROVISION OF TELEMESSAGING BY THE LEC

Using accounting methodology to prevent subsidies in the provisioning of telemessaging on an integrated basis is also fraught with difficulties. As Voice-Tel understands it, telemessaging frequently uses the same facilities that are used for other basic and optional services provided by the LEC. Furthermore, when the same switch is used for telemessaging and other features, the switch is not necessarily partitioned in a manner that permits direct allocation. Finally, although one *can allocate based on usage, the increased reliance on messaging may make any allocation formula outdated before it is put into place.*

Whereas the switch is susceptible to allocation, it is questionable whether appropriate allocation formulae can be devised for the use of lines and trunks. Most LECs permit access to a mailbox by at least two different methods. In the first, the mail box owner dials a special number with his or her NXX (mail box number) and then enters a series of codes and passwords to gain access to the messages. The switch that handles all calls handles the call to the mail box number. The lines that are used by the telephone company for all calls are used to reach the number. As far as can be determined none of the costs of the plant that are used to access the mail box number is allocated to the telemessaging service. This is in stark contrast to that experienced by the LEC competitor which must purchase lines and trunks to access its facilities.

In the second method, the customer can call his or her own number and enter the password when the voice message begins. In this case, there is no separate trunk or line cost for which allocation may be made. The call is carried as is any other without extra charge. Again, this is unlike the practice toward the LEC competitor which must pay for the lines and lines and trunks from the central office to the voice messaging switch. Where the customer dials his own line, any attempt at cost allocation would be counter productive in any event. By increasing the size of the central office, the costs "allocated" to voice messaging could be made virtually to disappear.

An additional problem with relying on cost allocations is introduced by the fact that plant is subject to depreciation. Depreciation is based on factors averaged within study areas, usually states, and may have little relevance to the actual experience in any given location. Most certainly any difference in the useful life of equipment based on the fact that the equipment is used for voice *messaging services would not be reflected in the depreciation schedules applied to the equipment. Again, no amount of study or detail can cure this difficulty.*

Adding to the problems outlined above, the provision of voice messaging requires the services of technicians to ensure that the facilities work properly. At first glance, it would appear to be rather easy to allocate the time spent by technicians in the services of telemessaging facilities. However, because these facilities are currently integrated with the basic facilities of the telephone company, such separation may require the use of allocators. If this is the case, the question then arises, how to define useful allocators. At the present time, telemessaging does not constitute a large portion of a LEC's business. On an intuitive basis, therefore, there would be minimal costs allocated to telemessaging. But the problems that a technician faces may not be commensurate to the percentage of the business that the LEC derives from telemessaging. Anecdotal information indicates that problems with telemessaging may be greater than might be inferred from the size of that portion of the LEC business. In any event, unless the anticipated growth of this portion of the LEC business is on a par with the growth in its other activities, allocation based on size, whether in numbers of customers or revenues or any other basis, may well be outdated before it is installed. The difficulty of devising and maintaining proper allocations in light of depreciation policies and practices also arises in connection with the proper allocation of office space for company representatives as well as with other LEC personnel throughout the LEC hierarchy.

Finally, it should be noted that when a service is provided on an integrated basis, some costs required for the delivery of the service may not even be recognized. For example, when an office orders NXX's are some required for telemessaging uses and if so, does the telephone company understand that and allocate a portion of the costs of the order to its voice messaging services? By the same token, when additional customer service representatives are needed in a *particular office, by what means can the most assiduous supervisor determine the extent to which the additional employee is required because the office is marketing voice messaging services? Does this mean, however, that there are no costs associated with the marketing of the voice messaging services?*

Simply put, the offering of voice messaging services on an integrated basis puts an impossible burden on accounting to safeguard against unlawful subsidization. Attempts to use accounting safeguards to protect ratepayers will fail and will inevitably inhibit the development of a healthy competitive atmosphere as contemplated in the 1996 Act.

3. THE USE OF ACCOUNTING PROVISIONS AS A REGULATOR OF AN INTEGRATED OPERATION

Accounting is the practice of identifying and separating expenditures in a manner that provides critical information about the operation of a business entity. Where particular subsets of services are offered in a totally integrated manner it is often virtually impossible to disaggregate the costs of the salaries, training, benefits, to say nothing of the office, furniture and fixtures in a manner that accurately reflects the subset being examined. This is true of telemessaging First, as discussed above, the services are totally integrated. The same person during the same telephone conversation discusses all aspects of the services provided by the LEC. The amount of time spent discussing the competitive offerings will vary all over the map. Even were it possible to apply old-fashioned time-motion type studies to determine the percentage of time spent dealing with competitive services, the results would be out-dated before they were compiled and the costs, in any event, could not be justified.

Second, the fact that telemessaging is offered at the retail level of the hierarchy means that any allocation is particularly susceptible to manipulation stemming from the application of other cost *factors. Costs at this level do not appear separately on the books of accounts. Rather, they are combined with many other costs and aggregated into a series of categories many of which contain parts of the costs actually incurred in the sales, marketing and provision of telemessaging. The current accounting system does not provide any way in which to segregate costs of providing telemessaging separate and distinct from other costs. In any event, the aggregation at which financial information is reported means that the detail applicable to telemessaging will inevitably be lost in the mass of accounting data and individual accounts. For example, any allocation would be affected by the depreciation policies applied to the furniture and fixtures used by the individual company service representatives and by the technicians. The methods of applying depreciation affects the dollars allocated for equipment. The life of equipment may be driven by special competitive factors but the depreciation expense is visited on the monopoly ratepayer as well as the purchaser of the competitive services. As an example, a single piece of equipment may be used for both telemessaging and basic activities of a telephone company. In estimating the useful life of such equipment, the telemessaging activities may well determine that life. Presumably the life will be shorter than if telemessaging were not offered. In any event, the fact that the services are integrated makes it virtually impossible to ensure that the competitive aspects do not drive the depreciation decisions. Simply put, where operations are integrated, a company may evaluate the useful life of equipment based on its perceived utility for the telephone company as a competitor in competitive markets. Thus, in determining the useful life of a switch, the telephone company that provides a telemessaging option on an integrated basis might well consider the competitive life span in derogation of the actual useful life. Under these circumstances, it would be expected that the useful life would be shorter than it would be if competition were not considered.*

Furthermore, the general levels of cost information available to the regulators and the public makes it unwise to rely on accounting alone to safeguard the public. This is particularly true because different methodologies are used to determine costs. And no methodology, whether LRIC, fully distributed costs or some other methodology is used, an entity that wants to obfuscate costs, however that term is defined, can do so. For example, depreciation can mask costs. The way in which labor and ancillary equipment is capitalized or expenses can have a serious impact on the perceived original costs of equipment and plant.

Finally, in any event, the fact that the Commissions rules and regulations apply to study areas rather than to specific company subdivisions. This means that expenses within a single division, especially when affected by system wide depreciation and other system wide costs, rarely are seen during the examination of the larger picture revealed by the Commission Parts 32 and 64. Although auditing procedures can aid in revealing anomalies, the auditing resources of the Commission are clearly insufficient to enable the Commission to rely on auditing as a primary tool to ensure that there is no improper subsidization.

In summary, Voice-Tel fears that the application of accounting rules that would permit local exchange companies to continue to offer telemessaging on an integrated basis would, at best, provide a false sense of security that there is no unlawful cross-subsidization. More likely, this false sense of security would be coupled with the additional expense of compliance that would inevitably hurt the basic ratepayer without enhancing the competitive environment.

B. ACCOUNTING SAFEGUARDS FOR SEPARATE AFFILIATES

Although, at this time Voice-Tel is not suggesting a fundamentally different approach to cost allocations in general, it is strongly urging the Commission to require that a separate subsidiary be required to offer telemessaging services. Voice-Tel submits that this is the only means to establish an environment that will meet the goals of Section 260 of the 1996 Act.

Telemessaging is an information service for which a separate affiliate is required for BOCs under Section 272 of the 1996 Act. Thus, BOCs that wish to provide in-region, interLATA services can no longer provide telemessaging except through a separate affiliate. The offering of telemessaging services on a non-integrated basis will, for the first time, permit the development of healthy competition for this new and growing service. For the reasons outlined above, a separate affiliate requirement should also be imposed on all incumbent LECS as the only means to carry out the mandate of Section 260. In this connection, it is respectfully suggested that the non-discrimination provisions of Section 260 are broad enough for the Commission to determine telemessaging can no longer be provided by a local exchange company except through an affiliate. To permit non-BOC LECs to continue to provide telemessaging services on an integrated basis would make it virtually impossible for the Commission to carry out the mandate of Section 260 of the 1996 Act and would disserve the ratepaying customers of the non-BOC LEC.

One of the issues facing the Commission is whether this requirement can be visited on an individual LEC operating in a single state. Voice-Tel respectfully submits that the inherent interstate nature of the offering permits this preemption. In today's world, telemessaging is inherently an interstate service. It is as likely that a message is sent interstate as that it originates and terminates in a single state. Indeed, an argument could be made that voice messaging is particularly suited for communications between different time zones. Telemessaging provides the means whereby people living in different time zones can communicate with each other at times convenient to the caller.

If, as suggested above, the Commission recognizes the fact that separate subsidiaries are required, the current accounting safeguards as they may be modified to comply with the 1996 Act, together with adequate auditing procedures, will, Voice-Tel submits, best assure the creation of a pro-competitive environment that will protect the basic ratepayer. If there are separate companies and if the services must be made available at publicly disclosed prices to all comers, there will be some basis for competitors, regulators and customers to determine whether the costs, upon which the prices are based, are properly allocated. Even in this regard, however, it must be remembered that internal systems, no matter how carefully designed, do not and cannot provide complete safeguards. Furthermore, additional consideration will have to be given to issues involving inter-company transfers and the allocation of certain shared costs. There has not, however, been requisite time available for filing comments herein, to devote sufficient attention to these essential details. It is hoped that there will be time for further consideration of these important matters.

Voice-Tel wholeheartedly concurs in the Commission reading of Section 271 and 272 insofar as they require that telemessaging be provided by a BOC only through a separate affiliate. For the reasons set forth above, it does not believe that the mandate of Section 260 can be met unless a separate affiliate is required for the offering of telemessaging services. This coupled with the fact that telemessaging contemplates interstate activity provides, it is submitted, a sufficient basis for the commission to require separate subsidiaries in all cases of telemessaging.

With the establishment of a separate affiliate, reliance can be placed on the prices that the underlying carrier charges its affiliate. In this regard, the Commission should require that the same prices under the same terms and conditions be made available to all competitors.

This would relieve the Commission of some of its most burdensome auditing activities and would create a healthy competitive atmosphere as contemplated in the 1996 Act.

III. CONCLUSION

The purposes of the Telecommunications Act of 1996 will be achieved only if the Commission continues to take those actions necessary to enforce its provisions. Towards this end, Voice-Tel asks the Commission to recognize the inherent limitations of accounting policies, rules and procedures to provide effective regulation. In this regard, for the reasons set forth above, Voice-Tel urges the Commission to establish rules that would prohibit the offering and provision of voice messaging services on an integrated basis and require separate affiliates purchasing services and facilities at prices available to all competitors for the provision of telemessaging services by LECs. This is required if the goals of full and free competition the telecommunications industry are to be realized.

Respectfully submitted,

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